

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILLS NOS. 5 & 21
91ST GENERAL ASSEMBLY

Reported from the Committee on Miscellaneous Bills and Resolutions, May 2, 2001, with recommendation that the House Committee Substitute for Senate Committee Substitute for Senate Bills Nos. 5 & 21 Do Pass.

TED WEDEL, Chief Clerk

0077L.05C

AN ACT

To repeal sections 513.605, 513.607, 513.647 and 513.653, RSMo 2000, relating to the criminal activity forfeiture act, and to enact in lieu thereof four new sections relating to the same subject, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 513.605, 513.607, 513.647 and 513.653, RSMo 2000, are repealed
2 and four new sections enacted in lieu thereof, to be known as sections 513.605, 513.607, 513.647
3 and 513.653, to read as follows:

513.605. As used in sections 513.600 to [513.645] **513.653**, unless the context clearly
2 indicates otherwise, the following terms mean:

3 (1) (a) "Beneficial interest":

4 a. The interest of a person as a beneficiary under any other trust arrangement pursuant
5 to which a trustee holds legal or record title to real property for the benefit of such person; or

6 b. The interest of a person under any other form of express fiduciary arrangement
7 pursuant to which any other person holds legal or record title to real property for the benefit of
8 such person;

9 (b) "Beneficial interest" does not include the interest of a stockholder in a corporation
10 or the interest of a partner in either a general partnership or limited partnership. A beneficial
11 interest shall be deemed to be located where the real property owned by the trustee is located;

12 (2) "Civil proceeding", any civil suit commenced by an investigative agency under any

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

13 provision of sections 513.600 to [513.645] **513.653**;

14 (3) "Criminal activity" is the commission, attempted commission, conspiracy to commit,
15 or the solicitation, coercion or intimidation of another person to commit any crime which is
16 chargeable by indictment or information under the following Missouri laws:

17 (a) Chapter 195, RSMo, relating to drug regulations;

18 (b) Chapter 565, RSMo, relating to offenses against the person;

19 (c) Chapter 566, RSMo, relating to sexual offenses;

20 (d) Chapter 568, RSMo, relating to offenses against the family;

21 (e) Chapter 569, RSMo, relating to robbery, arson, burglary and related offenses;

22 (f) Chapter 570, RSMo, relating to stealing and related offenses;

23 (g) Chapter 567, RSMo, relating to prostitution;

24 (h) Chapter 573, RSMo, relating to pornography and related offenses;

25 (i) Chapter 574, RSMo, relating to offenses against public order;

26 (j) Chapter 575, RSMo, relating to offenses against the administration of justice;

27 (k) Chapter 491, RSMo, relating to witnesses;

28 (l) Chapter 572, RSMo, relating to gambling;

29 (m) Chapter 311, RSMo, but relating only to felony violations of this chapter committed
30 by persons not duly licensed by the supervisor of liquor control;

31 (n) Chapter 571, RSMo, relating to weapons offenses;

32 (o) Chapter 409, RSMo, relating to regulation of securities;

33 (p) Chapter 301, RSMo, relating to registration and licensing of motor vehicles;

34 (4) "Criminal proceeding", any criminal prosecution commenced by an investigative
35 agency under any criminal law of this state;

36 (5) "Investigative agency", the attorney general's office, or the office of any prosecuting
37 attorney or circuit attorney;

38 (6) "Pecuniary value":

39 (a) Anything of value in the form of money, a negotiable instrument, a commercial
40 interest, or anything else the primary significance of which is economic advantage; or

41 (b) Any other property or service that has a value in excess of one hundred dollars;

42 (7) "Real property", any estate or legal or equitable interest in land situated in this state
43 or any interest in such real property, including, but not limited to, any lease or deed of trust upon
44 such real property;

45 (8) "Seizing agency", the agency which is the primary employer of the officer or
46 agent seizing the property, including any agency in which one or more of the employees
47 acting on behalf of the seizing agency is employed by the state of Missouri or any political
48 subdivision of this state;

49 **(9) "Seizure", the point at which any law enforcement officer or agent discovers**
50 **and exercises any control over property that an officer or agent has reason to believe was**
51 **used or intended for use in the course of, derived from, or realized through criminal**
52 **activity. Seizure includes but is not limited to preventing anyone found in possession of the**
53 **property from leaving the scene of the investigation while in possession of the property;**

54 **(10) (a) "Trustee":**

55 a. Any person who holds legal or record title to real property for which any other person
56 has a beneficial interest; or

57 b. Any successor trustee or trustees to any of the foregoing persons;

58 **(b) "Trustee" does not include the following:**

59 a. Any person appointed or acting as a personal representative under chapter 475, RSMo,
60 or under chapter 473, RSMo;

61 b. Any person appointed or acting as a trustee of any testamentary trust or as trustee of
62 any indenture of trust under which any bonds are or are to be issued.

 513.607. 1. All property of every kind, **including cash or other negotiable**
2 **instruments**, used or intended for use in the course of, derived from, or realized through
3 criminal activity is subject to civil forfeiture. Civil forfeiture shall be had by a civil procedure
4 known as a CAFA forfeiture proceeding.

5 2. A CAFA forfeiture proceeding shall be governed by the Missouri rules of court, rules
6 of civil procedure, except to the extent that special rules of procedure are stated herein.

7 3. **Any property seized by a law enforcement officer or agent shall not be disposed**
8 **of pursuant to section 542.301, RSMo, or by the uniform disposition of unclaimed property**
9 **act, sections 447.500 through 447.595, RSMo, unless the CAFA proceeding involving the**
10 **seized property does not result in a judgment of forfeiture.**

11 4. In cases where the property is abandoned or unclaimed, an in rem CAFA forfeiture
12 proceeding may be instituted by petition by the prosecuting attorney of the county in which the
13 property is located or seized by the attorney general's office. The proceeding may be commenced
14 before or after seizure of the property.

15 [4.] 5. In lieu of, or in addition to, an in rem proceeding [under] **pursuant to** subsection
16 [3] 4 of this section, the prosecuting attorney or attorney general may bring an in personam action
17 for the forfeiture of property, which may be commenced by petition before or after the seizure
18 of property.

19 [5.] 6. (1) If the petition is filed before seizure, it shall state what property is sought to
20 be forfeited, that the property is within the jurisdiction of the court, the grounds for forfeiture,
21 and the names of all persons known to have or claim an interest in the property. The court shall
22 determine ex parte whether there is reasonable cause to believe that the property is subject to

23 forfeiture and that notice to those persons having or claiming an interest in the property prior to
24 seizure would cause the loss or destruction of the property. If the court finds that reasonable
25 cause does not exist to believe the property is subject to forfeiture, it shall dismiss the
26 proceeding. If the court finds that reasonable cause does exist to believe the property is subject
27 to forfeiture but there is not reasonable cause to believe that prior notice would result in loss or
28 destruction, it shall order service on all persons known to have or claim an interest in the
29 property prior to a further hearing on whether a writ of seizure should issue. If the court finds
30 that there is reasonable cause to believe that the property is subject to forfeiture and to believe
31 that prior notice would cause loss or destruction, it shall without any further hearing or notice
32 issue a writ of seizure directing the sheriff of the county or other authorized law enforcement
33 agency where the property is found to seize it.

34 (2) Seizure may be effected by a law enforcement officer authorized to enforce the
35 criminal laws of this state prior to the filing of the petition and without a writ of seizure if the
36 seizure is incident to a lawful arrest, search, or inspection and the officer has probable cause to
37 believe the property is subject to forfeiture and will be lost or destroyed if not seized. Within
38 four days of the date of seizure, such seizure shall be reported by said officer to the prosecuting
39 attorney of the county in which the seizure is effected or the attorney general; and if in the
40 opinion of the prosecuting attorney or attorney general forfeiture is warranted, the prosecuting
41 attorney or attorney general shall, within ten days after receiving notice of seizure, file a petition
42 for forfeiture. The petition shall state, in addition to the information required in subdivision (1)
43 of this subsection, the date and place of seizure. The burden of proof will be on the investigative
44 agency to prove all allegations contained in the petition.

45 [6.] 7. After the petition is filed or the seizure effected, whichever is later, every person
46 known to have or claim an interest in the property shall be served, if not previously served, with
47 a copy of the petition and a notice of seizure in the manner provided by the Missouri rules of
48 court and rules of civil procedure. Service by publication may be ordered upon any party whose
49 whereabouts cannot be determined or if there be unknown parties.

50 [7.] 8. The prosecuting attorney or attorney general to whom the seizure is reported shall
51 report annually by January thirty-first for the previous calendar year all seizures. Such report
52 shall include the date, time, and place of seizure, the property seized, the estimated value of the
53 property seized, the person or persons from whom the property was seized, the criminal charges
54 filed, and the disposition of the seizure, forfeiture and criminal actions. The report shall be made
55 to the director of the Missouri department of public safety and shall be considered an open
56 record. **The prosecuting attorney or attorney general shall submit a copy of the report to**
57 **the state auditor at the time the report is made to the director of the department of public**
58 **safety.**

59 **9. The state auditor shall make an annual report compiling the data received from**
60 **law enforcement, prosecuting attorneys and the attorney general, and shall submit the**
61 **report regarding seizures for the previous calendar year to the general assembly annually**
62 **by February twenty-eighth.**

63 **10. Intentional or knowing failure to comply with any reporting requirement**
64 **contained in this section shall be a class A misdemeanor, punishable by a fine of up to one**
65 **thousand dollars.**

513.647. 1. No state or local law enforcement agency may transfer any property seized
2 by the state or local agency to any federal agency for forfeiture under federal law until the
3 prosecuting attorney and the circuit judge of the county in which the property was seized first
4 review the seizure and approve the transfer to a federal agency, **regardless of the identity of the**
5 **seizing agency.** The prosecuting attorney and the circuit judge shall not approve any transfer
6 unless it reasonably appears the activity giving rise to the investigation or seizure involves more
7 than one state or [the nature of the investigation or seizure would be better pursued under federal
8 forfeiture statutes] **unless it is reasonably likely to result in federal criminal charges being**
9 **filed, based upon a written statement of intent to prosecute from the United States attorney**
10 **with jurisdiction.** No transfer shall be made to a federal agency unless the violation would be
11 a felony under Missouri law or federal law.

12 2. Prior to transfer, in an ex parte proceeding, the prosecuting attorney shall file with the
13 court a statement setting forth the facts and circumstances of the event or occurrence which led
14 to the seizure of the property and the parties involved, if known. The court shall certify the
15 filing, and notify by mailing to the last known address of the property owner that his property is
16 subject to being transferred to the federal government and further notify the property owner of
17 his right to file a petition stating legitimate grounds for challenging the transfer. If within
18 ninety-six hours after the filing of the statement by the prosecuting attorney, the property owner
19 by petition shows by a preponderance of the evidence that the property should not be transferred
20 to the federal government for forfeiture, the court shall delay such transfer until a hearing may
21 be held. If the court orders a delay in transfer, no later than ten days after the filing of a petition
22 under this section and sections 513.649 and 513.651, a hearing shall be held unless the court
23 deems, for good cause shown, that a continuance should be granted. At the hearing, if the
24 prosecutor has proved by a preponderance of the evidence that the investigation or seizure
25 involved more than one state or that the nature of the investigation or seizure would be better
26 pursued under the federal forfeiture statutes, the court shall order that the transfer shall be made.

513.653. 1. Law enforcement agencies involved in using the federal forfeiture system
2 under federal law shall be required at the end of their respective fiscal year to acquire an
3 independent audit of the federal seizures and the proceeds received therefrom and provide this

4 audit to their respective governing body. A copy of such audit shall be provided to the state
5 auditor's office. This audit shall be paid for out of the proceeds of such federal forfeitures.

6 **2. Intentional or knowing failure to comply with the audit requirement contained**
7 **in this section shall be a class A misdemeanor, punishable by a fine of up to one thousand**
8 **dollars.**